IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6334 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

SUBHLAXMI MILLS LTD

Versus

NATWARLAL C PARIKH

Appearance:

1. Special Civil Application No. 6334 of 1989

MR KN RAVAL for Petitioner No. 1

MS PJ DAVAWALA for OL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 06/07/2001

ORAL JUDGEMENT

In this Special Civil Application under Article 226 of Constitution of India, the petitioner has challenged the order dated 28.6.1989 passed by the

Appellate Authority under Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act") whereby the Appellate Authority confirmed the order, dated 8.2.1988 passed by the Controlling Authority, Nadiad under the Act.

2. Vide the impugned order, dated 28.6.1989(annexure "C") the Appellate Authority directed the petitioner to pay Rs.10,000/- by way of gratuity amount payable to the respondent-workman holding the workman to be in continuous service from 1.1.1951.

3. It is submitted by Ms.Davawala, learned advocate for the Official Liquidator for the Gujarat State Textile Corporation, the Mill Company having taken over by the Gujarat State Textile Corporation that the workman resigned from service of the Mill Company in the year 1968, and after some time he rejoined the service. That the period from 1951, i.e. his initial appointment can not be treated as continuous for the purpose of payment of gratuity, inasmuch as the respondent-workman had resigned in the year 1968 for some time.

4. There is nothing on record to suggest that the respondent-workman tendered resignation in 1968 putting his service with the Mill Company to an end by his act or volition. The learned advocate states that there is nothing on record to suggest that the respondent-workman submitted his resignation. At the same time, there is nothing to suggest the basis on which the respondent-workman is said to have been re-employed. In the absence of evidence suggesting that the respondent-workman had resigned from service of the erstwhile Mill Company, and in the absence of evidence suggesting the basis on which the respondent-workman was re-employed, it can not be said that the respondent-workman resigned from the employment of the erstwhile Mill Company, and rejoined the services of the erstwhile Mill Company, as contended by the learned advocate for the Official Liquidator.

5. In view of the above, the order dated 28.6.1989 passed by the Appellate Authority under the Act confirming the order dated 8.2.1988 passed by the Controlling Authority can not be said to be suffering from any illegality, or the order can not be said to be illegal or improper in any manner, and the present petition, being devoid of merits, is liable to be dismissed and, in the consequence, the amount deposited by the petitioner in favour of respondent-workman is liable to be released.

6. In the result, petition fails. Rule is discharged with no order as to costs.

6.7.2001 (N.G.NANDI,J)